(21)

HIGH COURT OF CHHATTISGARH

Writ Petition No.1999 of 2002

Petitioners: Ishwar Prasad and others

Versus

Respondents Sub-Divisional Officer, Sakti and others.

Post for order 15 -5-2007

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition No.1999 of 2002

Petitioners

(1) Ishwar Prasad aged 32 years, S/o. Gopal Ram Sahu.

(2) Liladhar aged 29 years, S/o. Gopal Ram Sahu.

(3) Khuleshwar aged 27 years, S/o. Gopal Ram Sahu.

All residents of village Bhothia, Tahsil Jaijaipur, Dist. Janjgir-Champa.

Versus

Respondents

(1) Sub-Divisional Officer, Sakti.

(2) Jamuna Singh, S/o. Bholaram, R/o. Bhothia, P/A Borda, Tahsil Sakti.

(3) Gopal Ram Sahu S/o. Mohan Sahu, R/o. Bhothia, Tahsil Jaijaipur.

(4) Bhuwan Singh S./o. Pit Singh Kawar, R.o. Barapali, Tahsil Sakti, Dist. Janjgir-Champa.

(5) State of Chhattisgarh, through Collector, Janjgir-Champa.

(Writ Petition under Article 227 of the Constitution of India)

SB: Hon'ble Mr. Justice Satish K. Agnihotri

Present:

Shri Harsh Vardhan Sharma, counsel for the petitioners.
Shri Utkarsh Verma, Dy. Govt. Advocate for respondents No. 1 and 5./State.
Shri Awadh Tripathi, counsel for respondent No.2.

ORDER
(Passed on 15 -5-2007)

By this petition filed under Article 227 of the Constitution of India, the petitioners impugn the order dated 13-8-2002 (Annexure P/1) passed by the Additional Collector, Janjgir-Champa, whereby the order

passed by the Authority below was set aside and the matter was remitted back to the Sub-Divisional officer, Sakti, for afresh decision.

2) The indisputable facts, in nutshell, are that the respondent No.2 namely Jamuna Singh made an application before the Sub-Divisional Officer, Sakti, under the provisions of Section 170-B of the MP/CG Land Revenue Code, 1959 (hereinafter referred to as "the Code 1959"), stating that the transfer of the land in dispute was made by the father of the respondent No.2 Bholaram in favour of Bhuwan (tribal). The said transaction is benami transaction as the real owner was Gopalram Sahu (non-tribal). The petitioners are legal heirs of Gopalram Sahu. The Sub-Divisional Officer, Sakti, directed reversion of the said land vide his order dated 7-4-1999

3) The petitioners challenged the order dated 7-4-1999 passed by the Sub-Divisional Officer, Sakti, before the Additional Collector, Janjgir-Champa, on the ground that the petitioners are not made parties and the respondent No.2 has secured the order by suppressing material facts. It was stated that the petitioners purchased the part of land bearing Khasra No. 1307/2 area 0.56 acre in pieces from Yadhisthir, Bhuwan and Dhurandhar. The land was purchased with the prior permission of the Additional Collector, Janjgir-Champa. The Additional Collector, Janjgir-Champa, after having considered all the aspects, vide order dated 23-8-1999 (Annexure P/2) held that the order passed by the Sub-Divisional Officer, Sakti, was contrary to the principles of natural justice as the parties in possession were not given any notice of hearing, the order passed by the Sub-Divisional Officer, Sakti, was set aside and the same was remitted back to the Sub-Divisional Officer, Sakti, for fresh

decision after affording an opportunity of hearing to all the parties concerned.

4) On remand, the Sub-Divisional Officer, Sakti, vide order dated 17-4-2000 (Annexure P/3), held that the purchase of the land in dispute was with the prior permission of the Additional Collector, Janjgir-Champa, thus, the provisions of Section 170-B of the C.P.C., were not attracted to the case.

5) Being aggrieved, the petitioners further filed an appeal before the Additional Collector, Janjgir-Champa. The Collector, Janjgir-Champa vide order dated 13-8-2002 (Annexure P/1), after having considered all the facts in detail, set aside the order dated 17-4-2000 passed by the Sub-Divisional Officer, Sakti, (Annexure P/3) and remanded back the matter to Sub-Divisional Officer, Sakti, to consider the case afresh on the following grounds:

1. वादग्रस्त भूमि के प्रथम केता गण भुवन, धुरंधर एवं युधिष्ठिर द्वारा अतिरिक्त कलेक्टर बिलासपुर से भूमि विकय की अनुमति पत्र में दिये गये शर्तों के अनुसार क्या भूमि विकय करने के बाद उसके बदले भूमि कय किया गया है ?
2. क्या खरीदी गई भूमि एवं विकय की गई भुमि का पंजीयन एक साथ अनुविभागिय अधिकारी सक्ती के समक्ष किया गया ?
3. क्या वाद भूमि की प्रतिफल राशी उत्तरवादीगण द्वारा प्रथम केता को अनुविभागीय अधिकारी के समक्ष भुगतान किया गया ?
4. मूल धारकों से प्रथम केतागण द्वारा भूमि कय करने के बाद उनका कब्जा होना सिध्द नहीं हुआ है क्योंकि वे अन्य ग्राम बरपाली में रहते हैं तथा उन्हें भूमि के भौतिक स्थिति के बारे मे जानकारी नहीं हैं। इस विषय पर भी उचित विवेचन किया जावे।"

6) The petitioners have impugned the order on the ground that there cannot be any enquiry after a period of thirteen years. The purported transfer of the land in dispute from tribal to another tribal and thereafter subsequent transfer with the prior permission of the Additional Collector, is not the subject matter of any enquiry and the respondent No.2 has no locus standi to challenge the transfer.

7) I have heard learned counsel for the parties, perused the pleadings and the documents appended thereto. The object of Section 170-B of the Code, 1959, is to protect transfers of tribal lands in scheduled areas to non-tribals, in the event it is found that the possession of land by non-tribal was not in accordance with law. The provisions of Section 170-B of the Code 1959, provide for reversion of land of the members of aboriginal tribe which was transferred by fraud. Thus, on mere reading of certain documents, it cannot be held that the object, which sought to be achieved by the incorporation of Section 170-B in the Code, vide notification dated 24-10-1988, has achieved its purpose. Thus, it is necessary that the controversy has to be enquired into properly. The impugned order passed by the Additional Collector, Janjgir-Champa, is in-furtherance of objects and purpose of the provisions of Section 170-B of the Code, 1959.

8) In view of the above, I do not find any perversity, illegality or irregularity warranting interference with the impugned order passed by the Authority below. Thus, the petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju